IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 359 OF 2003

Shri Vilas V.Sanghai ...Petitioner.
vs.
The State of Maharashtra ...Respondents.

ALONGWITH
CRIMINAL WRIT PETITION NO. 289 OF 2003

Shri.Dilip Narayan Shinde ...Petitioner.
vs.
The State of Maharashtra ...Respondents.

Mr.Prakash Shah for the petitioner in W.P.No. 359/2003.
Mr.ArjunWadkar for the petitioner in W.P.No.289/2003.
Mr.R.M.Nakhwa, Learned A.P.P. for State.

CORAM: S.C.DHARMADHIKARI, J.

JUDGEMENT RESERVED : 19/01/2007.

JUDGEMENT PRONOUNCED: 09/04/2007.

ORAL JUDGMENT :

1. Both petitions involve identical questions of fact and law and were heard together. They are being disposed off by this common judgment.

2. Writ Petition No. 359 of 2003 invokes jurisdiction of this court under Article 227 of the

Constitution of India read with Section 482 of the Code of Criminal Procedure 1973. It is directed against an order dated 7.5.2002 passed in Miscellaneous Application No. 7 of 2002 by Special Judge Mumbai in Complaint ACB/BMU Criminal No. 29 of 2000 and the Sanction Order dated 6.12.2002 passed by the Additional Director General of Police (Law & Order), Mumbai.

3. The Petitioner in the first petition is a Senior Inspector of Police and at the time of the filing of the petition was attached to Thane Railway Police Station. He joined the Maharashtra police in 1975 as Police Sub-Inspector. Thereafter, his services were made over to Bombay police in 1977 on the same post. It is the case of the petitioner, that, he had a successful career of 27 years of Police service. The same is clean and unblemished.

4. It is alleged that one Altaf Kadir Shaikh had purchased Shop No.1, 63/65, Sayed House, Cadel Road, Mahim, Mumbai-16 in October 1999 from one Khalid Ahmed Basekhan. In June, 2000 one Iqbal claimed

rights in his shop and alongwith Khalid Ahmed Basekhan started harassing and threatening Altaf Kadir Shaikh. Altaf Kadir Shaikh also received threats from unknown persons. He lodged a N.C. at Mahim Police Station. The complainant Ahmed Ismail Shaikh @ Raja Shaikh was helping the complainant Altaf and therefore he also received threats.

5. On 16.7.2000 at 19.00 hrs the complainant Ahmed alongwith Altaf Shaikh attended the Mahim Police Station and as per the instructions of P.I.Shri Sanghai, PSI Shinde recorded the statement of Altaf Shaikh.

6. The Complainant came to know that an offence has been registered at Mahim Police Station against him and three others. PSI Rajendra Naghbire had registered at Mahim police station, C.R.No. 230 of 2000 under Section 454, 457, 380, 451, 506(II), 34, 120(B), I.P.C. r/w. 23, 25 Arms Act on complaint of Shri. Mohanbhai Khanchandani on 17.7.2000. The further investigation of this case was handed over to P.I.Sanghai as per the orders of Sr.P.L.Jedhe of

Mahim Police Station. After confirmation on 20.7.2000 at 16.30 hrs, the complainant alongwith Altaf Shaikh met D.C.P. Zone IV, Mumbai Shri Kadam and informed him about the offence registered against them and submitted representation to DCP Zone IV. On the same day at 19.00 hrs the complainant met P.I. Shri Sanghai at Mahim police Station, P.I. Sanghai called PSI Shinde. At that time P.I. Sanghai told the complainant that Altaf Shaikh would not get the shop valued Rs.40,00,000/- so easily. In order to avoid arrest of complainant, Altaf Shaikh and 2 others, an amount Rs.20,00,000/- be paid as bribe. After discussion the bribe amount was reduced to 10,00,000/-. The complainant showed his inability to pay the bribe amount. Therefore, PSI Shinde told the complainant to come after 2-3 days.

7. At 19.30 hrs the complainant was produced before Sr.P.I.Shri Jedhe. The complainant has stated that Sr.P.I.Jedhe told the complainant that his work will be done and he will have to pay the amount as per the say of PI Sanghai and the

complainant was allowed to go.

8. When the complainant attended Mahim Police Station on 25.7.2000 at 19.00 hrs as per the call from PSI Shinde, he met PI Sanghai. Thereafter PSI Shinde was called by P.I. Sanghai. P.I. Sanghai then demanded Rs.10,00,000/- for not arresting the complainant and others. Over this the complainant agreed to pay Rs.3,00,000/- in four instalments and further agreed to pay Rs. 50,000/- as first installment on 26.7.2000. PSI Shinde told the complainant to come alone and to bring Rs.50,000/- at Mahim police Station after 6.00 p.m. on 26.7.2000.

9. The complainant accompanied by panch witness Shri Dhumal met P.I. Sanghai at Main gate of Mahim Police Station at 18.25 hrs. At that time P.I. Sanghai asked for amount of Rs.10,00,000/-. Over this the complainant told that he will pay Rs.3,00,000/- after taking the same from Shri Dhumal, who is his relative. The complainant was asked to wait till the arrival of PSI Shinde.

10. Thus, it is alleged that on 26th July, 2000 at about 6.00 p.m. Shri Sanghai (Petitioner in first petition) attempted to obtain a sum of Rs.10 lakhs for himself and on behalf of the Petitioner in the second petition from the Complainant as gratification other than legal remuneration as a motive or reward for doing or for bearing to do official Acts or for showing favour or for bearing to show disfavour in exercise of their official functions to the Complainant in the matter of not arresting him and others in an offence registered against him at Mahim Police Station. It is further alleged that the Petitioners demanded, attempted to obtain pecuniary advantage from the Complainant by corrupt or illegal means or otherwise abusing their position as public servants and thereby committed an offence punishable under Section 7 and 12 of the Prevention of Corruption Act, 1988. I.P.C. r/w. 3, 25 Arms Act.

11. On 27.7.2000 the Petitioner was arrested but was released on bail on the following day as per the

order of the court. During the course of the investigation, statements of various persons were recorded. A draft sanction order was sent to the Competent Authority for getting sanction to prosecute the Petitioner Accused and one P.S.I.Shinde. The Competent Authority rejected the request to grant sanction to prosecute both, namely, the Petitioners, vide order dated 28.8.2001.

12. It is, therefore, that an Application (Misc.Application No.7 of 2002) was moved on behalf of the Assistant Commissioner of Police, Anti-Corruption Bureau, Mumbai on 22.2.20002. It was contended that since the Competent Authority has refused to grant sanction in this case the A.C.B. is unable to forward chargesheet against the Accused persons in terms of Section 173(2) of Cr.P.C.

13. The Special Court was therefore requested to pass appropriate order either of ‘A’ summary or any other order to meet the ends of justice. However, the Learned Special Judge while rejecting this Application observed that the matter be referred to

the Sanctioning Authority for Re-consideration. The Special Judge directed that after the Sanctioning Authority takes necessary steps, the A.C.B can approach the Special Court. This order was passed on 7.5.2002. After this order was passed and the matter was referred back to the Sanctioning Authority, it accorded sanction to the prosecution of the Petitioner and the co-accused Shinde in the court of competent jurisdiction for offences punishable under Section 7, 12 of the Prevention of Corruption Act, 1988. The order passed on 7.5.2002 and the subsequent act of the Sanctioning Authority of grant of sanction is under challenge in this petition under Section 482 of the Code of Criminal Procedure read with Article 227 of the Constitution of India.

14. The second Writ Petition is by co-accused Dilip Shinde and the facts and circumstances narrated therein are identical.

15. Mr.Shah appearing for the petitioner in Writ Petition No. 359 of 2003, submits that, the order

passed by the Learned Special Judge to the extent it permits reconsideration of the earlier order of sanction is ex-facie bad in law. He submits that the Special Judge had no jurisdiction to refer the matter back to the Director General of Police for re-consideration. Once, the Special Judge had rejected the application which was preferred by the Assistant Commissioner of Police, the consequences in law ought to have followed. The Learned Judge should have proceeded with the matter, if permissible in law, but could not direct reconsideration. In these circumstances, this Court should exercise its Inherent and Supervisory powers and correct the apparent error and manifest illegality. Mr.Shah, submits that, sanction is a discretion of the Sanctioning Authority. The court cannot intervene at all in that behalf. It neither can grant sanction nor can issue directions to the Sanctioning Authority to grant it or otherwise consider the matter. He submits that the law laid down by the Supreme Court is clear. In this behalf he relies upon the judgment of the Supreme Court in the case of **Mansukhlal Vithaldas Chauhan Vs.State of**

Gujarat reported in **AIR 1997 S.C. page 3400.** He submits that due to the direction issued by the Special Judge, the Sanctioning Authority was left with no choice but to grant sanction. He submits that the only course open to the Special Judge was to either close the case or proceed with it in accordance with law. He has passed an order directing reconsideration of the issue of sanction without hearing the accused. Hence, the order is wholly illegal and deserves to be quashed and set aside.

16. Mr.Shah, invites my attention to Section 19 of the Prevention of Corruption Act and submits that that the prosecution was not seeking quashing of the earlier order refusing sanction. Even the Sanctioning Authority had no power to recall or review its earlier order. Even if the court had directed or referred the matter back for reconsideration, the Sanctioning Authority had no power to review its earlier order. Hence, both orders, namely, of the Special Judge and that of the Sanctioning Authority be quashed and set aside.

17. Mr.ArjunWadkar appearing for the Petitioner in Writ Petition No. 289 of 2003 adopts the arguments of Mr. Shah. In addition he submits that the only relief, the Special Judge could have granted is to either grant permission for closing the case or refuse it. On the application of the prosecution to do so, no other order could have been passed, much less referring the matter back for reconsideration of the Sanctioning Authority.

18. Mr.ArjunWadkar, submits that the Special Judge has no inherent powers. There is no other provision in the Cr.P.C. empowering the Special Judge to refer the matter back to the Sanctioning Authority for reconsideration. In such circumstances, the order passed by the Special Judge cannot be sustained. Since there is no fresh material before the Sanctioning Authority, there was no warrant for sanctioning the prosecution.

19. The Learned A.P.P. on the other hand, has submitted that the impugned order is justified,

inasmuch as, the Learned Judge has rejected the prosecution's application for closing the case. He has not issued any direction but after inviting the attention of the prosecution and other authorities to the legal position, he has referred the matter for reconsideration of the Sanctioning Authority. It was for the Sanctioning Authority to pass appropriate orders. In this behalf, the Learned APP has invited my attention to the additional Affidavit of Ramesh P. Mahale, A.C.P. Anti-Corruption Bureau, Mumbai dated 6th August, 2003. He submits that now the Sanctioning Authority has granted sanction. That order is an administrative order. The Sanctioning Authority has after applying its mind come to the conclusion that a prima-facie case is made out and therefore proceeded to grant sanction. In such circumstances, there is no warrant for interfering with the order granting sanction. He submits that the issue raised in the petition is now academic because sanction has been granted for prosecution of the petitioners by the Sanctioning Authority on 6.12.2002. In such circumstances, whether the Learned Judge could have

referred the matter back for Re-consideration of the Sanctioning Authority is something which should not be gone into and decided in this case. Even otherwise, according to Mr.Nakhwa, learned A.P.P., this is not a fit case for exercising the Inherent and equitable powers of this court. He has also placed reliance on Section 19 of the Prevention of Corruption Act, to support his contentions.

20. At the outset, it must be noticed that the present petitions have been admitted without any interim order. The trial is not stayed. Infact, the apprehension is that it is likely to commence. It is in this backdrop that the rival contentions have to be seen. **In AIR 1997 S.C. page 3400 Mansukhlal Vithaldas Chauhan vs. State of Gujarat,** on which reliance has been placed by the Petitioner before me, the facts were that the Appellant before the Supreme Court was prosecuted for offences punishable under Section 161 of I.P.C. and Section 5(2) of the Prevention of Corruption Act, 1947. He was ultimately convicted and sentenced to two years Rigorous Imprisonment and a fine of Rs.15,000/- for

the offences under Section 5(2) of the Prevention of Corruption Act and 2 years R.I. for the one punishable under Section 161 of I.P.C. The conviction and sentence was upheld by the Gujarat High Court. The matter was carried in Appeal to the Supreme Court and the argument before the Supreme Court was that there was no valid sanction within the meaning of Section 6 of the Prevention of Corruption Act. As a result, the Trial Court had no jurisdiction to take cognisance of the offences, much less try them. The Supreme Court considers the facts and during the course of narration of the same, refers to the direction of the Hon'ble Gujarat High court in Special Civil Application No. 5126 of 1984 dated 2.1.1985. The Gujarat High Court allowed the petition and directed that the Sanctioning Authority should grant sanction for prosecution of the Appellant before the Supreme Court for offences punishable under the above mentioned provisions. This order and direction of the Gujrat High Court in the Special Civil Application has been faulted by the Hon'ble Supreme Court. The Supreme Court observed that no direction could have been issued to

grant sanction, Whether to grant sanction or not depends upon several factors, that discretion is best left to the Sanctioning Authority are the conclusions in this Judgment. The Supreme Court refers to several judgments on the point and has made the observations relied upon by Mr. Shah.

21. In the present case the Special Judge has rejected the application filed by the prosecution praying for recording ‘A’ Summary. In other words, that was an application invoking the Special Judge’s power for closure of the case. During the course of the hearing of that application, the Learned Judge has observed that the Sanctioning Authority has gone into the merits of the matter and it had no jurisdiction to hold that there is no material for trying the Accused. In the peculiar facts of this case and when the Authorities misread the legal provisions intended to curb bribery and corruption, the Learned Judge thought that he is not bound to close the case. In effect, what the Special Judge observed was that the Authority has pre-judged the matter on merits at the stage of grant of sanction.

According to the Learned Judge apart from the fact that such an exercise is imperssible in law, additionally, the Authority has ignored Section 7 and 12 of the Prevention of Corruption Act, 1988. Therefore, he held that it is not possible to close the case. After making such observations, the Special Judge rejected the application of the prosecution and referred the matter back for reconsideration of the Sanctioning Authority. Thus, the Special Judge granted one opportunity to the Authority to consider the matter of sanction afresh. The Sanctioning Authority has reconsidered the whole matter and accorded sanction for prosecution of the petitioners before me.

22. I have perused the application which was preferred by the prosecution before the Special Judge. The facts are undisputed. The charges are indeed grave and serious in nature. The petitioner did not make any application before the Special Judge but the prosecution applied for closure of the case. On the prosecution’s application the Learned Judge made the observations as above and rejected

the same. The Learned Judge only referred the matter for reconsideration of the Sanctioning Authority. There is nothing on record to indicate that the Sanctioning Authority granted sanction only because of the observations of the Learned Judge or influenced by the act of the Special Judge in referring the matter for its reconsideration. The certified copy of the Sanction Order dated 6.12.2002 has been placed before me. Perusal of the same would indicate that the Sanctioning Authority after going through the material placed before it, including record of investigation, has decided to grant sanction. This is not a case where any direction was issued to grant sanction. The Learned Judge has not directed the Sanctioning Authority to grant sanction but only referred the matter for its Re-consideration. Such a direction in the peculiar facts of this case, cannot be viewed as any direction to grant sanction. It is not an order or direction of the nature faulted by the Supreme Court in Chauhan’s case (supra). Nor the Sanction Order is passed by Sanctioning Authority mechanically in obedience of order of court without independent

application of mind. Therefore the reliance by Mr.Shah and Mr.ArjunWadkar on the decision of the Supreme Court in Chauhan V/s. State of Gujarat is totally misplaced. Even otherwise, the orders granting sanction have to be scrutinised in the light of Section 19 of the Prevention of Corruption Act, 1988 and the law laid down by the Hon'ble Supreme Court from time to time including in the latest decision reported in AIR 2007 SCW page 1415 (Prakash Singh Badal vs. State of Punjab) [See paras 20, 21, 25 and 28].

23. The other argument is that the Special Judge did not grant any opportunity to the petitioners before observing that the matter deserves to be referred back for reconsideration of the Sanctioning Authority. In my view, the Learned Judge was considering the application of the prosecution for closure of the said case/proceedings therein. The matter was essentially between the prosecution and the court. Hence, it was not necessary for the Special Judge to summon the Accused and hear them. No prejudice has been caused to the Petitioners,

because it is not as if they have no remedy as the Special case will now proceed in accordance with law. The prosecution will have to prove beyond reasonable doubt, that the petitioners are guilty of the offences alleged. In such circumstances, even this argument has no substance.

24. In the above facts and circumstances, and when I am of the opinion that the Sanctioning Authority has not been influenced by any observation of the Special Judge, but, has granted the order of sanction after satisfying itself that a prima-facie case is made out, then, there is no merit in the contention of the petitioners. The Special Judge was not exercising any inherent powers as contended, but merely made some observations during the course of rejecting the prosecution’s application for closing the proceedings. In the peculiar facts of this case, I am of the view that no case is made out for interfering either with the order of the Special Judge or with that of the Sanctioning Authority in my jurisdiction under Section 482 of Cr.P.C. so also the writ jurisdiction under Article 227 of the

Constitution of India. In fact, in somewhat identical situation the Supreme Court did not interefere with a direction of the Learned Single Judge of the Punjab and Haryana High Court to grant sanction but modified it. (See 2001 AIR SCW 2262 Para 8) [State of Punjab vs. Vinod Kumar].

25. The Learned Judge has observed that the matter was placed for sanction of the Sanctioning Authority earlier. However, while so placing it a Note was forwarded and a perusal of the same shows that the observations therein is that the Trap was not successful. There is lack of evidence to show that the Notes changed hands. Thus, merits were discussed in detail which was uncalled for. Public Interest therefore demands that the matter is sent for re-concideration. More so, when the Director General on the earlier occassion did not apply his independent mind but merely relied on the Note. This being the position I am unable to hold that the impugned orders are wholly illegal or vitiated by any errors apparent as contended by the petitioners. The impugned orders are in public interest and in

tune with the object and purpose of the Prevention of Corruption Act, 1988. Consequently the Writ Petitions fail. Rule stands discharged.

26. Before concluding, it is necessary to invite the attention of all concerned to the object and purpose of the Prevention of Corruption Act. In a reported decision, (AIR 2000 SC 870) State of Madhya Pradesh and Ors. vs. Shri Ram Singh) the Supreme Court observes thus:-

> "7: Corruption in a civilised society is a disease like cancer, which if not detected in time is sure to maliganise the polity of country leading to disastrous consequences. It is termed as plague which is not only contagious but if not controlled spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS, being incurable. It has also been termed as Royal thievery. The socio-political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti people, but aimed and targeted against them. It affects the economy and destroys the cultural heritage. Unless nipped in the bud at the earliest, it is likely to cause turbulence shaking of the socio-economic-political system in an otherwise healthy, wealthy, effective and vibrating society.
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> 8: The menace of corruption was found to have enormously increased by first and second world war conditions.

The corruption, at the initial stages, was considered confined to the bureaucracy, who had the opportunities to deal with a variety of State largesse in the form of contracts, licences and grants. Even after the war, the opportunities for corruption continued as large amounts of Government surplus stores were required to be disposed of by the public servants. As consequence of the wars the shortage of various goods necessitated the imposition of controls and extensive schemes of post-war reconstruction involving the disbursement of huge sums of money which lay in the control of the public servants giving them wide discretion with the result of luring them to the glittering shine of the wealth and property. In order to consolidate and amend the laws relating to prevention of corruption and matters connected thereto, the Prevention of Corruption Act, 1947 was enacted which was amended from time to time. In the year 1988, a new Act on the subject being Act No.49 of 1988 was enacted with the object of dealing with the circumstances, contingencies and shortcomings which were noticed in the working and implementation of 1947 Act. The law relating to prevention of corruption was essentially, made to deal with the public servants, as understood in the common parlance but specifically defined in the Act.

9: The Act was intended to make effective provision for the prevention of bribe and corruption rampant amongst the public servants. It is a social legislation defined to curb illegal activities of the public servants and is designed to be liberally construed so as to advance its object.

10: Procedural delays and technicalities of law should not be

> permitted to defeat the object sought to be achieved by the Act. The overall public interest and the social object is required to be kept in mind while interpreting various provisions of the Act and decided cases under it."

. Such observations have been made on earlier occasions while outlining the object and purpose of the Prevention of Corruption Act and when to achieve this object an order is passed by the Special Judge, then, this is not a fit case for exercising the inherent power under Section 482 of Cr.P.C. or the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India, more so when the trial was not stayed. It is in public interest that the cases under Prevention of Corruption Act are decided without any procedural and technical obstacles and hindrances. Rule discharged. However, the Learned Special Judge shall not be influenced by any observations made earlier, so also, by this Court while deciding these petitions and decide the matter on merits and in accordance with law. It is clarified that such observations are prima-facie and tentative.

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